



## FINANCIAL DISCLOSURE REQUIREMENTS

### BACKGROUND

The Department of Law began receiving numerous complaints in 1989 that sponsors and holders of unsold shares were failing to disclose in a timely way significant changes in their financial condition. This had the detrimental effects of delaying the unit owners' and shareholders' ability to address financial problems in existing cooperatives, condominiums and homeowners associations and of keeping key information from prospective purchasers.

### INITIAL REQUIREMENT

In response to the urgent need for more detailed financial information, the Attorney General requested on March 21, 1990 that all sponsors or holders of unsold shares owning more than ten percent of the shares or units in a cooperative, condominium, or homeowner association project amend that offering plan by June 1, 1990 to disclose up-to-date information concerning the sponsor's or holder's financial obligations. This amendment was required even if there was no material change in the financial position of the sponsor or holder(s) and all payments were current.

### WHERE FINANCIAL DISCLOSURE REQUIREMENTS CAN NOW BE FOUND

This policy was embodied in formal regulations on August 15, 1990. The regulations for cooperatives (Parts 18 and 21), condominiums (Parts 23 and 20), and homeowners associations (Part 22) at Title 13 of the New York Code of Rules and Regulations ("13 NYCRR") were amended to include the detailed financial disclosure requirements. These requirements can now be found in the section of the regulations titled "Amendments extending the term of the offering plan". After the post-closing amendment is filed, a plan must be amended every twelve months in order to update the plan with current information. This update is necessary to extend the term of the offering plan. After an annual amendment is accepted for filing by the Attorney General, it, like any other amendment, must be served on all offerees -- shareholders, unit owners, and rental tenants, if any, who were tenants prior to the conversion.

The Martin Act requires an immediate amendment to the offering plan whenever there is a material change in the financial position of the sponsor or holder of unsold shares which may jeopardize its ability to meet its obligations to a cooperative, condominium or homeowners association. This immediate disclosure

is required, for example, whenever the sponsor or holder of unsold shares is not current on any of its financial obligations (including, but not limited to, maintenance or common charges, reserve or working capital fund payments, payments of underlying mortgages and loans for which unsold shares or units have been pledged or mortgaged, taxes unpaid or not escrowed, and payments for repairs or improvements promised in the offering plan).

#### OFFERING PLANS WITHOUT FINANCIAL DISCLOSURE AMENDMENTS

When the Attorney General's office first required that all sponsors or holder(s) of unsold shares with more than ten percent of the shares or units file a financial disclosure amendment, it exempted those who had previously been granted an exemption from filing update amendments pursuant to Cooperative Policy Statement No. 5 ("CPS-5") which included a representation that there were no financial problems with the sponsor, the holder(s) or the cooperative, condominium, or homeowners association. Since March 21, 1990, the Department of Law has not granted exemptions pursuant to CPS-5 unless a sponsor represents that it owns fewer than ten percent of the shares or units. A sponsor may now be exempted from filing update amendments only if either (i) five years or more have elapsed since the acceptance for filing of the post-closing amendment or (ii) if three or more years have elapsed since the sponsor relinquished control of the Board of Directors or Board of Managers and the sponsor or holder(s) of unsold shares together own ten percent or less of the shares or units associated with the offering plan. Sponsors who received CPS-5 treatment even though they owned in excess of ten percent of the shares or units are not required to file the financial disclosure amendment. Of course, if such a sponsor's financial condition changes adversely and the conditions for granting the CPS-5 are no longer true, an immediate amendment would be required.

Furthermore, any sponsor or holder(s) of unsold shares which is not engaging in sales activity of any kind need not file an extension amendment, including financial disclosure information.

#### CONCLUSION

(1) WHAT FINANCIAL INFORMATION IS REQUIRED?

Financial disclosure requirements are contained in the Attorney General's regulations (Parts 18, 20, 21, 22 and 23) at 13 NYCRR in the section entitled "Amendments extending the term of the offering plan." These regulations are available from the Department of Law's Public Information Office by calling 212-416-8122 or writing to the Department of Law, Real Estate Financing Bureau, 120 Broadway, New York, New York 10271.

(2) WHO MUST FILE?

Sponsors or holder(s) of unsold shares must file an amendment which extends the term of the offering plan at least every twelve months. This amendment must contain the required financial disclosure information when the sponsor or holder of unsold shares owns more than ten percent of the shares or units.

(3) WHEN ARE SPONSORS OR HOLDER(S) OF UNSOLD SHARES EXEMPTED FROM FILING?

A sponsor or holder(s) of unsold shares is not required to file an extension amendment which contains financial disclosure information where the sponsor or holder(s) of unsold shares: (i) has been granted an exemption from filing update amendments pursuant to a CPS-5 application accepted prior to March 21, 1990; or (ii) is not engaging in any sales activity; or (iii) owns ten percent or less of the units or shares, in which case, an extension amendment must be filed, but the financial disclosure information need not be included.

(4) WHAT CAN YOU DO IF NO FINANCIAL DISCLOSURE AMENDMENT WAS FILED?

If no financial disclosure amendment is required, a mortgagee, seller or prospective purchaser may want to ask the cooperative, condominium or homeowners association board, through the shareholder or unit owner involved, to provide certain basic information such as financial statements for the previous year; a budget for the present year; a statement of the number of shares or units presently owned by the sponsor or holder(s) of unsold shares; and whether or not that sponsor or holder(s) of unsold shares is current on all its financial obligations to the cooperative, condominium or homeowners association. If a financial disclosure amendment should have been filed in accordance with the Attorney General's regulations and policy, such information should be reported to the Attorney General's office, in writing, for investigation of the matter. If you have any questions, call our Public Information Office, (212) 416-8122

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